

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CINDY L. HILSGEN,

Petitioner,

v.

NANCY HOVE,

Respondent.

ORDER

18-cv-102-jdp

Cindy Hilsgen filed a pleading that I construed as a petition for writ of habeas corpus concerning her pretrial detention at the Pierce County Jail under a \$50,000 bond that Hilsgen considers to be excessive. *See* Dkt. 7. Given the likelihood that Hilsgen’s pretrial custody would be mooted by prolonged briefing, I stated that the court would hold a telephonic hearing after receiving the answer from respondent Sheriff Nancy Hove. Hove has filed an abbreviated answer asking me to dismiss the case because the Hilsgen was released after the state court lowered the bond amount to \$30,000 and Hilsgen posted that amount.

Hove cites *Johnson v. Hoy*, 227 U.S. 245 (1913) and *Stallings v. Splain*, 253 U.S. 339, 343 (1920), for the proposition that a detainee released on bail or bond is not “in custody” and cannot seek habeas relief. But this proposition is no longer good law: more recent case law makes clear that habeas relief can be available to unincarcerated persons like those on bail or bond. *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973) (petitioner who remained free on recognizance bond pending execution of sentence was “in custody” for purposes of habeas relief); *see also Jennings v. Rodriguez*, 138 S. Ct. 830, 873 (2018) (“In the habeas context, we have held that a person released on bail or on his own recognizance is in custody within the

meaning of the statute.” (internal quotations omitted)). Accordingly, I will deny Hove’s motion to dismiss. Hove still has time left on her original deadline to file a full answer.

But the modification of the bond amount and Hilsgen’s release does raise the question whether Hilsgen still seeks habeas relief. I will give her a short deadline to either confirm that she wishes to continue litigating this case or that she chooses to voluntarily dismiss it.

ORDER

IT IS ORDERED that:

1. Respondent Nancy Hove’s motion to dismiss, Dkt. 14, is DENIED.
2. Petitioner Cindy Hilsgen may have until April 2, 2018, to respond to this order.

Entered March 19, 2018.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge